82-1559

CASE NO.

Office-Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1982

ROBERT J. KONDRAT
Petitioner

vs.

CITY OF WILLOUGHBY HILLS
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF PETITIONER FOR WRIT OF CERTIORARI

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944 0140

BYRON & CANTOR, Attorney for Respondent
36100 Euclid Avenue
Willoughby, OH 44094
Telephone (216) 951 2303

QUESTIONS PRESENTED FOR REVIEW

I. Can a citizen be compelled to support a local government whose officials are oppressive and disregard the law?

II. Is there a denial of due process and equal protection of the laws when there is corruption in the state courts?

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OPINIONS BELOW

The Supreme Court of Ohio in Case No. 82-1695 on March 2, 1983 overruled a motion for an order directing the court of appeals to certify its record.

On October 18, 1982, the Eleventh District Court of Appeals of Ohio, in Case No. CA8-280 affirmed the decision of the Willoughby Municipal Court of August 24, 1981 in Case No. 80-CVF-39989 which granted the Respondent's Motion for Summary Judgment.

JURISDICTIONAL STATEMENT

A Petition for a Writ of Certiorari is sought of the order of the Supreme Court of Ohio entered March 2, 1983. The statutory provision confered on this court to review the order or decree in question by Writ of Certiorari, is the supremacy clause of the United States Constitution which establishes that federal law shall prevail over state and local laws where state or local laws interfers with federal law.

CONSTITUTIONAL STATUTES AND PROVISIONS INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the United States Constitution which guarantees that no person shall be deprived of life, liberty or property without due process of law, nor denied equal protection of the laws.

STATEMENT OF THE CASE

Respondent filed a Complaint in the court of first instance for judgment of city income tax placed by the Petitioner into an escrow account. Petitioner's escrow action was one of protest against appointed and elected governmental officials. Petitioner alleged that the officials did not function in accordance with city, state and federal laws.Evidence was introduced to show that the officials had conspired; libeled and slandered; and deprived the civil rights of people it represented. The originating court rendered a decision in favor of the Respondent.

Petitioner appealed to the Eleventh District Court of Appeals of Ohio. The assignment of error was that the court was corrupt. The Petitioner who is not an Attorney had asked the trial court for a stay in the case. The court granted a stay and Petitioner thought that the case had been stayed. But as it turned out the trial court's stay was associated with another matter. The trial court denied to hear Petitioner's Motion to Stay the case. However, this was only one issue presented by the Petitioner to sub-

staniate the court's corruptness. History and the status of litigation in the Lake County Courts, litigation that stemmed from the Recall of public officals, was presented in Petitioner's argument. Petitioner argued that this was a denial of the Fourteenth Amendment. The Appellate Court rendered a decision in favor of the Respondent.

Petitioner appealed to the Supreme Court of Ohio, citing the Fourteenth Amendment, that Petitioner was being denied life, liberty and property without due process of law and equal protection of the laws. The Supreme Court of Ohio rendered a decision in favor of the Respondent ruling that no substantial constitutional question existed. The Petitioner filed a complaint with the Supreme Court of Ohio protesting the decision because the Respondent did not file his Memorandum Opposing Jurisdiction within the time limit prescribed by law and because the Respondent presented the untruth in his untimely brief. The Supreme Court of Ohio did not respond to the Petitioner's complaint.

ARGUMENT

The assignment of error throughout has been that the Lake County judicial system is corrupt and that justice can not prevail where dishonesty is rampant. Corruption is a vicious and fraudulent intention to evade the prohibitions of the law; moral turpitude or exactly opposite of honesty involving international disregard of law from improper motives. State v. Barnett, 60 Okl. Cr. 355, 69 P. 2d 77,87. An act done with an intent to give some advantage inconsistent with official duty and the rights of others. Johnson v. U.S., C.C.A. Alaska, 260F. 783,786. The act of an official or fiduciary who unlawfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. U.S. v. Johnson, C.C.Ga., 26 F 682; Worsham v. Murchison, 66 Ga. 719; U.S. v. Edwards, C.C.Ala., 43 F 67.

The originating court did not hear or grant a ruling on Petitioner's Motion to Stay the case. The court of second instance refused to accept the fact that the Respondent was presenting false argument in his pleading. The court of third instance refused

to recognize the fact that the Respondent did not comply with the Rules of Practice of the Supreme Court of Ohio regarding the timely filing of pleadings, nor did it give consideration to the false matter being presented by the Respondent.

CONCLUSION

In the instant case the judiciaries at the lower levels have acted to give some advantage inconsistent with official duty and the rights of Petitioner by using their stations to procure benefit for the Respondent. Such behavior is corrupt and fraudulent which is against or forbidden by law, and is against the principals of the U.S. Constitution.

The Respondent's elected and appointed officials are alleged to have conspired; libeled and slandered; and deprived the civil rights of the people it is to represent. Some allegations were exposed in a court of law. Others, the Respondent's officials have admitted to. Because of the dastardly acts committed by the Respondent, the Petitioner choose not to support a tyrannical form of government. Petitioner placed into an escrow account such excess city

income tax monies that were due at the end of the year. Judgment was sought by the Respondent. The Petitioner, placing the Constitution above all else, objected and sought justice in the state courts. The state courts have reacted to condone tyranny, and take advantage of a litigant not schooled in the law. The Petitioner is entitled to the same rights in the courts as those who possess all the credentials. Petitioner is entitled to have the court rule on his Motion; the right to dispute the untruth; and the right to the same rules as enjoyed by the Respondent. The state courts have not provided this. This is a denial of due process of law and equal protection of the laws. Justice can not be administered discriminately, unequally or inconsistent with official duty. Just because the Petitioner is no attorney, this is no reason for the courts to apply a second standard. Granted, the Petitioner may not be capable of the correct phraseology, format or other ingredients that are essential to a court. But, one thing is certain, there can be no question as to the Petitioner's purpose or intention. The courts have fully understood this. And, there can be no reason for any injustice.

If it is to remain that our judicial system must operate under what appears to be a pretext of set rules and procedures that is to vacillate to suit whatever may be convenient for the occasion of the courts, then justice is abrogated. The ability of the courts to distinguish between right and wrong is nullified, and the basis for honest judgment is destroyed. Those who seek justice are denied it. And, the framers of our Constitution that sought to protect future generations from tyranny will have worked in vain.

The right to protest is inherent in our form of government. Our government was born and is nourished by it. And, the very existance of our freedom is dependant upon it. Whether the protest is made in the form of placing into an escrow account tax monies, or whether it be by a march through Selma, Alabama, the cries of both are for the same purpose. That purpose is to complain of the injustices suffered. Injustices brought about by the refusal of one to acknowledge the rights of another. Such is this case.

Petitioner requests that the Writ of Certiorari be granted.

Respectfully Submitted,

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944 0140
Petitioner

CITY OF WILLOUGHBY HILLS
Byron & Cantor
36100 Euclid Avenue/Suite 330
Willoughby, OH 44094
Telephone (216) 951 2303
Attorney for Respondent

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IN THE WILLOUGHBY MUNICIPAL COURT

WILLOUGHBY, OHIO

CITY OF WILLOUGHBY HILLS 35405 Chardon Road Willoughby Hills, Ohio 44094 Plaintiff	)	CASE NO. 80 CVF 39989
-vs-	)	ANSWER
ROBERT J. KONDRAT 29121 Chardon Road Willoughby Hills, Ohio 44092 Defendant	)	JURY TRIAL DEMANDED

FILED
SEP 10 12 35 PM '80
MUNICIPAL COURT
WILLOUGHBY, OHIO

Now comes the Defendant Robert J. Kondrat and for his Answer to the Complaint states as follows:

The taxes for the years named in the Complaint have been placed in escrow because elected and appointed officals of the captioned governmental body have not functioned in accordance with the City of Willoughby Hills Charter, the State and Federal laws, and in accordance with the United States Constitution.

The captioned governmental body has been uncommunicative, has harassed its citizens, is discriminatory, and has engaged in tyranny. Defendant stands ready to prove this.

This Country was founded by people who sought refuge from this type of government.

If the Defendant were to provide taxes to an oppressive governmental body, which functions contrary to established laws, and contrary to the designs of the United States Constitution, then the Defendant would be severing the jugular vein of the United States Constitution. The lifeblood of this nation would be sapped, and the very evils which our founders tried to prevent would prevail. The Defendant can not and will not let this happen.

Defendant does not ask that the Complaint be dismissed. Instead, the Defendant asks that the governmental officials be brought to court, be exposed and punished.

Respectfully Submitted,

Robert J. Kondrat, pro se

IN THE WILLOUGHBY MUNICIPAL COURT

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS,)

Plaintiff) ORDER

vs)

CASE NO. 80 CV F 39989

ROBERT KONDRAT,)

Defendant)

RECEIVED
FEB 14 1981

This matter having come on before the Court on Defendant's request for removal of Judge, and the Court having reviewed the request, deems it to be a motion for disqualification of Court under the Ohio Revised Code and therefore certifies the Motion to the Administrative Judge, Common Pleas Court, Lake County, Ohio for appropriate action.

All further proceedings in this matter are stayed pending ruling by the Court of Common Pleas.

IT IS SO ORDERED.

Elaine R. Crane

Elaine R. Crane, Judge

cc: Abraham Cantor, Attorney for Plaintiff
Robert Kondrat, Defendant

Feb 11 4:34 PM '81
WILLOUGHBY MUNICIPAL COURT
WILLOUGHBY, OHIO

FILED
LAKE CO. CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

IN RE:

CITY OF WILLOUGHBY HILLS,

Plaintiff

-vs-

ROBERT KONDRAT,

Defendant

Willoughby Muni. Ct. No. 80 CV F 3998

JOURNAL ENTRY

February 26, 1981

RECEIVED
FEB 27 1981

This matter came on for ruling on the motion of the defendant for removal of Judge Crane.

After a careful review of the material submitted, the Court finds that the motion is not well taken and is, therefore, denied.

Accordingly, the file is returned to Judge Crane for whatever further action she feels is called for.

IT IS SO ORDERED.

JOHN M. PARKS,
Judge of the Court of Common Pleas

Copies to:

Willoughby Municipal Court

Abraham Cantor, Esq.

Robert Kondrat
29121 Chardon Road
Willoughby Hills, Ohio 44092

FILED
Time _____
MAR 4 1981
MARY J. TOMA
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS
35405 Chardon Road
Willoughby Hills, Ohio 44094

Plaintiff

-v-

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092

Defendant

CASE NO. 80 CVF 39989

FILED
COURT OF APPEALS
1981
JOHN
CLERK OF COURT

NOTICE OF APPEAL

CA 8-206

Notice is hereby given that Robert J. Kondrat, Defendant, hereby appeals to the Eleventh District Court of Appeals, the JOURNAL ENTRY denying the removal of Judge Crane, for the capticned case, entered in this action on the 26th day of February, by Judge Parks, Lake County Court of Common Pleas.

Robert J. Kondrat

SERVICE

A copy of the foregoing NOTICE OF APPEAL was mailed this 3rd day of March, 1981, to Abraham Cantor of Byron and Cantor, 330 Lake West Medical Bldg., 36100 Euclid Ave., Willoughby, Ohio 44094, by regular first class mail, U.S. postage prepaid.

Robert J. Kondrat

Assignment of Error attached
cc: Attorney General of U.S.
News Media

ASSIGNMENT OF ERROR

Defendant asks that the court reverse the lower court's decision, which denied the removal of Judge Crane, because the lower court's decision is in opposition to the provisions of the Constitution of the United States. The U.S. Constitution states that judicial officers shall be bound by oath or affirmation, to support the Constitution. Judge Crane had voiced an opposition to recalls. Recalls are a guaranteed right under the First Amendment, which in part is, the right to petition the government for a redress of grievances. The Judge of the lower court which denied the motion for removal of Judge Crane is not upholding the oath to support the U.S. Constitution, when he sympathizes with another Judge that has already stated beliefs which are contrary to the established freedoms of the U.S. Constitution.

Robert J. Kondrat

IN THE WILLOUGHBY MUNICIPAL COURT

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS	)	CASE NO. 80-CV-F-39989
Plaintiff	)	
-vs-	)	JOURNAL ENTRY
ROBERT KONDRAT	)	
Defendant	)	

DECEIVED
MAR 13 1981

This matter having been returned to this Court after review by the Court of Common Pleas, Lake County, for further disposition, and the Court finding that in the interest of Justice for both parties the matter should be set before an Acting Judge.

NOW THEREFORE, I Judge Elaine Crane, hereby voluntarily recuse myself from this matter, and hereby appoint Leo Collins, as Acting Judge for all further purposes, including the pending motion for Summary Judgment.

The matter shall be set by the Clerk at the mutual convenience of the parties for oral argument on all pending motions.

IT IS SO ORDERED.

JUDGE ELAINE B. CRANE

FILED
MAR 12 2 02 PM '81
WILLOUGHBY
MUNICIPAL COURT
WILLOUGHBY, OHIO

cc: Abraham Cantor, Atty. for plaintiff
36102 Euclid Avenue, Suite 330
Willoughby, Ohio 44094

Robert Kondrat
29121 Chardon Road
Willoughby, Ohio 44094

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

CITY OF WILLOUGHBY HILLS
Plaintiff

-vs-

ROBERT J. KONDRAT
Defendant

FILED
COURT OF APPEALS
MAR 20 1981
ANDY J. TOTH
CLERK OF COURT
LAKE COUNTY, OHIO

CASE NO. CA 8-206

MOTION TO STAY THE CASE

RECEIVED
MAR 2

Now comes the Defendant and respectfully moves that this case be stayed until a final determination by the courts is rendered on Defendant's cause of action to compel the Attorney General of the United States to enter the captioned case.

The cause of action against the U.S. Attorney General is presently in the Sixth Circuit Court of Appeals.

Robert J. Kondrat

SERVICE

A copy of the foregoing MOTION TO STAY THE CASE was mailed this 14th day of March, 1981 to Abraham Cantor of Byron & Cantor, 330 Lake West Medical Bldg., 36100 Euclid Ave., Willoughby, Ohio 44094; and to the Attorney General of the United States, The Department of Justice, Washington, D.C. 20530, by regular first-class mail, and certified RRR mail respectively, postage prepaid.

Robert J. Kondrat

cc: News Media

IN THE WILLOUGHBY MUNICIPAL COURT

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS	)	CASE NO. 80-CV-F-39989
Plaintiff	)	
-vs-	)	JOURNAL ENTRY
ROBERT KONDRAT	)	
Defendant	)	

RECEIVED MAR 16 19[illegible]

This matter having come on upon notice of Appeal by defendant of the remand ruling of the Court of Common Pleas, and the Court having voluntarily recused hereself from hearing this matter,

NOW THEREFORE, I Leo Collins, Acting Judge herein, do hereby order that all proceedings be and are hereby stayed pending disposition of defendant's Appe l.

IT IS SO ORDERED.

Leo Collins, Acting Judge

cc: Andy Totin, Clerk of Courts
RE: Appellate
Abraham Cantor, Prosecutor, City of Willoughby Hills
Robert Kondrat

3-16-81
Copies Mailed

FILED
Mar 16 10 14 AM '81
WILLOUGHBY
MUNICIPAL COURT
WILLOUGHBY, OHIO

FILED
COURT OF APPEALS
MAY 18 1981
ANDY J. TOTH
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO)
) IN THE COURT OF APPEALS OF OHIO
LAKE COUNTY) SS: ELEVENTH DISTRICT

CITY OF WILLOUGHBY HILLS,)
PLAINTIFF-APPELLEE,) JOURNAL ENTRY
- VS -) CASE NO. 8-206
ROBERT J. KONDRAT,)
DEFENDANT-APPELLANT.)

RECEIVED
MAY 19 1981

Motion to dismiss the notice of appeal filed herein is sustained. The order appealed from is not a final order.

"A finding by the presiding judge of the Court of Common Pleas that the charge of bias and prejudice set forth in an affidavit filed in a mayor's court is not sustained, is not a final order of the Court of Common Pleas from which an appeal on questions of law may be taken to the Court of Appeals." State v. Lindsey, 77 Ohio App. 191, Syllabus.

See also State v. Oliver, 2 Ohio App. 2d 224.

Notice of appeal filed on March 4, 1981 is dismissed.

JUDGES OF THE 7th APPELLATE DISTRICT,

(WILLIAM H. VICTOR)
JUDGE OF THE 9th APPELLATE DISTRICT,
SITTING BY ASSIGNMENT IN THE 11th
APPELLATE DISTRICT.

IN THE WOULLOUGHBY MUNICIPAL COURT
LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS,	)	CASE NO. 80-CVF-39989
	)	(Judge Elaine R. Crane)
Plaintiff	)	
	)	
-vs-	)	JUDGMENT ENTRY
	)	
ROBERT KONDRAT	)	
	)	
Defendant	)	

RECEIVED
AUG 25 1981

This cause came on for hearing this day of July, 1981, upon the Plaintiff's motion for a Summary Judgment, the reply thereto, and the evidence.

After a careful consideration of the pleadings, exhibits, and items of discovery, the Court finds that reasonable minds can come to but one conclusion and that conclusion is adverse to the Defendant herein, and the Plaintiff is entitled to have Judgment for the amount claimed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Judgment be rendered in favor of the Plaintiff against the Defendant for the sum of Eight Hundred and Twelve Dollars and Thirty Nine Cents ($812.39), together with interest at the rate of eight per cent (8%) per annum from November 1st, 1980, and costs herein.

Signed, Leo R. Collins, Acting Judge
Leo R. Collins, Acting Judge

FILED
AUG 24 10 35 AM '81
MUNICIPAL COURT
WILLOUGHBY, OHIO

CC:
Abraham Cantor
Attorney for Defendant
Suite 330
36102 Euclid Avenue
Willoughby, Ohio 44094

Robert Kondrat, Pro Se
29121 Chardon Road
Willoughby Hills, Ohio 44092

IN THE WILLOUGHBY MUNICIPAL COURT

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS 35405 Chardon Road Willoughby Hills, Ohio 44094 Plaintiff	CASE NO. 80 CVF 39989
-vs-	NOTICE OF APPEAL WITH REASON FOR APPEAL
ROBERT J. KONDRAT 29121 Chardon Road Willoughby Hills, Ohio 44092 Defendant	

Notice is hereby given that Robert J. Kondrat, Defendant, hereby appeals to the Eleventh District Court of Appeals, the JUDGMENT ENTRY rendering a Judgement in favor of the Plaintiff, for the captioned case, entered in this action as filed on August 24, 1981, by Judge Leo R. Collins, Willoughby Municipal Court.

Robert J. Kondrat

SERVICE

Copies of the foregoing NOTICE OF APPEAL were mailed to Barry M. Byron, 330 Lake West Medical Bldg., 36100 Euclid Avenue, Willoughby, Ohio 44094; and to the United States Attorney General, The Department of Justice, Washington D.C. 20530, by regular and certified U.S. mail respectively, postage prepaid, on this 31st day of August, 1981.

Robert J. Kondrat

cc: News Media
Bar Associations

ASSIGNMENT OF ERROR OR REASON FOR APPEAL

The captioned case is appealed for the reason that this Lake County court is corrupt and that justice cannot prevail where dishonesty is rampant. It was in the Willoughby Municipal court in the case of Cain & Hern vs Robert J. Kondrat, Case No. 32786, that this corruptness was first evident. Attached hereto and to be made a part of this assignment is five pages (EXHIBIT A) from a brief of that case. Now, this Lake County court continues to exemplify itself in the same corruptive manner. It granted a STAY in the captioned case pending Defendant's appeal, then rescinded the STAY and rendered a decision (EXHIBITS B,C & D). Need anything more be said about this Lake County court.

Robert J. Kondrat

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS

-23-

ELEVENTH DISTRICT

FILED
COURT OF APPEALS
OCT 18 1982
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

CITY OF WILLOUGHBY HILLS,

Appellee

- vs -

ROBERT J. KONDRAT,

Appellant

JUDGMENT ENTRY

CASE NO. 8-280

RECEIVED
OCT 19 1982

This cause came on to be heard upon the Record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each Assignment of Error was reviewed by the Court and disposed of as set forth in this Court's Opinion, which is incorporated herein by reference.

It is ordered that the costs shall be taxed against the appellant

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into execution. A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

JUDGE JOSEPH DONOFRIO

FOR THE COURT

Judges O'Neill and Donofrio,
Seventh District;
Judge Victor, Ninth District;
BY ASSIGNMENT TO ELEVENTH DISTRICT.

FILED
COURT OF APPEALS
OCT 18 1982
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO, LAKE COUNTY

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

CITY OF WILLOUGHBY HILLS,

Plaintiff-Appellee,

Vs.

ROBERT J. KONDRAT,

Defendant-Appellant.

OPINION.

CASE NO. 8-280

RECEIVED
OCT 19 [illegible]

APPEARANCES.

Abraham Cantor, 36100 Euclid Ave #330, Willoughby, Ohio 44094 for Plaintiff-Appellee.

Robert J. Kondrat, Pro Se, 29121 Chardon Road, Willoughby Hills, Ohio 44092.

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio,
Hon. William H. Victor, JJ.

Dated:

DONOFRIO, J.

Appeal from the Willoughby Municipal Court, Lake County, Ohio, from a judgment rendered in favor of plaintiff-appellee, city of Willoughby Hills, against defendant-appellant, Robert J. Kondrat.

On August 21, 1980, appellee filed a civil complaint in the Willoughby Municipal Court against appellant for the collection of municipal income taxes for the 1977, 1978 and 1979 calendar years.

Appellant filed an answer. Appellee filed a motion for summary judgment accompanied by the affidavit of the Willoughby Hills tax administrator alleging the amount then due and owing the city of Willoughby Hills for municipal income tax. On December 1, 1980, the Willoughby Municipal Court granted appellant a leave to answer discovery and appellee's motion for summary judgment by December 23, 1980.

Appellant filed a request to have the Willoughby Municipal Court judge removed from considering the case at bar. The court in its order of February 11, 1981, certified the case at bar. The court in its order of February 11, 1981, certified the case to the Lake County common pleas administrative judge and stayed the proceedings pending the outcome of this certification. On February 26, 1981, the administrative judge found the motion to be not well taken and referred the case back to the municipal court judge for appropriate action.

On March 2, 1981, the Willoughby Municipal Court judge then voluntarily removed herself and appointed an acting judge to consider the proceedings.

On or about March 4, 1981, appellant appealed the decision of the administrative judge in Willoughby Hills v. Kondrat, Eleventh District Court of Appeals, Case No. 8-206.

The acting Willoughby Municipal Court judge stayed the case pending disposition of appellant's appeal.

On March 16, 1981, the appellee filed a motion to dismiss in the court of appeals claiming that the appeal was not from a final appealable order. On May 18, 1981, this appellate court dismissed the appeal because the appeal was not from a final appealable order.

On August 24, 1981, the acting judge of the Willoughby Municipal Court granted the appellee's motion for summary judgment, stating:

> "This cause came on for hearing this day of July, 1981, upon the Plaintiff's motion for a Summary Judgment, the reply thereto, and the evidence.
>
> "After a careful consideration of the pleadings, exhibits, and items of discovery, the Court finds that reasonable minds can come to but one conclusion and that conclusion is adverse to the Defendant herein, and the Plaintiff is entitled to have Judgment for the amount claimed.
>
> "IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Judgment be rendered in favor of the Plaintiff against the Defendant for the sum

of Eight Hundred and Twelve Dollars and Thirty Nine Cents ($812.39), together with interest at the rate of eight per cent (8%) per annum from November 1st, 1980, and costs herein."

Appellant appeals. Appellant does not set forth an assignment of error. However, in his brief under the heading "Statement of the Case" he complains of the trial court's action. We set this forth in full to glean therefrom what may be issues that he brings before us for resolution. Appellant states:

"Plaintiff-Appellant (sic, Appellee) filed his Complaint in Willoughby Municipal Court, praying for judgement against Defendant-Appellee (sic, Appellant).

"Defendant's Answer alleged that the appointed and elected officials of the city of Willoughby Hills had not functioned in accordance with city, state and federal laws, and in accordance with the United States Constitution (see Exhibits A through Z attached to interrogatories in the record). In protest to Plaintiff's unlawful and unconstitutional actions, the Defendant elected to place into an escrow account such monies as were due Plaintiff to be held there until the governmental officials were brought to court, tried and punished for their tyrannical actions.

"Subsequently, Plaintiff filed a Motion for Summary Judgement. Defendant filed a Complaint in federal court to compel the U.S. Attorney General to defend Defendant in Plaintiff's action. A Motion to stay the case pending the outcome in the federal court was filed by Defendant with the trial court. The trial court ordered a stay pending disposition of Defendant's appeal. However, the trial court without reason, reversed its own stay order and rendered a decision in favor of Plaintiff."

Thereafter, under what appellant styles as argument is a series of references to other cases brought in Lake County which are not of issue herein. Appellant's references to the other cases are set forth in an attempt to show that all of these proceedings indicate corruptive judicial practices of Lake County. Other than this attempt appellant's arguments as to the issue herein are amorphous. If, by appellant's brief, he is bringing forth error in the trial court because the conduct of the trial was biased to the prejudice of the appellant, we find that the record does not contain a transcript of trial activity sufficiently to demonstrate prejudice alleged by appellant. Having failed to produce a record which would demonstrate this issue as an error, we do not find prejudicial error in the conduct of the trial.

A reading of a portion of the brief captioned "Argument" reflects appellant's concern over the procedure whereby the trial court rendered summary judgment against him.

Appellant claims that the trial court had granted a stay of proceedings and suddenly granted summary judgment against him.

A review of the record reflects that there was no motion to stay proceedings pending the outcome of a federal court action. Appellant, however, did file such a motion in the court of appeals in the appeal of an interlocutory order

of the trial court in the case at bar in the case known as Willoughby Hills v. Kondrat, Eleventh District Court of Appeals, Case No. 8-206, on or about March 14, 1981.

The trial court's judgment stated on March 16, 1981:

> "This matter having come on upon notice of Appeal by defendant of the remand ruling of the Court of Common Pleas, and the Court having voluntarily recused herself from hearing this matter,
>
> "NOW THEREFORE, I Leo Collins, Acting Judge herein, do hereby order that all proceedings be and are hereby stayed pending disposition of defendant's Appeal."

The stay to which appellant refers is a stay granted by the acting judge of the Willoughby Municipal Court pending the disposition of the Case No. 8-206. After this court dismissed that appeal, there was nothing to prevent the trial court from ruling on appellee's motion for summary judgment.

It must be noted that appellant has never claimed that he does not owe the money for his failure to pay his municipal income tax to the city of Willoughby Hills.

Therefore, we find that appellant's argument regarding the trial court's failure to stay is found to be without merit.

As to the granting of summary judgment by the trial court, Civil Rule 56(E) provides in pertinent part:

> "* * * When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere

allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Appellee moved for summary judgment based upon the affidavit of Charles Gallagher, Willoughby Hills tax commissioner, who stated that the appellant had not filed a municipal income tax form for the 1977, 1978 and 1979 calendar years. Gallagher then computed appellant's tax liability giving him credit for municipal income tax withholding payments and then computed interest and penalties.

There were no counter-affidavits or other documents filed to refute the calculations. Therefore, the trial court had uncontradicted information sufficient to determine appellant's municipal income tax liability.

For the foregoing reasons we affirm the judgment of the trial court.

Judgment affirmed.

O'Neill, P. J., of the
Seventh Appellate District,
concurs;
Victor, J., of the Ninth
Appellate District, concurs;
Sitting by Assignment.

APPROVED:

JUDGE, OF THE SEVENTH APPELLATE DISTRICT,
SITTING BY ASSIGNMENT

FILED
COURT OF APPEALS
1982
ANDY J. TOTH
CLERK OF COURT
LAKE COUNTY, OHIO

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

FROM

THE COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT

APPELLATE COURT CASE NO. CA8-280

CITY OF WILLOUGHBY HILLS	)	CASE NO. _____
	)	
Appellee	)	
	)	
-vs-	)	NOTICE OF APPEAL
	)	
ROBERT J. KONDRAT	)	
	)	
Appellant	)	

Now comes Robert J. Kondrat and gives NOTICE OF APPEAL to the Supreme Court of Ohio from the JUDGMENT ENTRY AND OPINION entered in the Court of Appeals of Lake County, Eleventh Appellate District, on the 18th day of October, 1982; that the case is one which did not originate in the Court of Appeals; and that the case involves a substantial Constitutional question.

Respectfully Submitted,

Robert J. Kondrat

SERVICE

Copies of the foregoing NOTICE OF APPEAL were mailed this 3rd day of November, 1982, by regular first class mail, postage prepaid, to the following:

U.S. Attorney General Smith
The Department of Justice
Washington, D.C. 20530

(CERTIFIED RRR #P17 5878516)

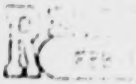
Office of The Clerk
United States District Court
Cleveland, OH 44114

(TO BE FILED AND MADE A MATTER OF RECORD IN CASE NO. C82-896)

IN THE SUPREME COURT OF OHIO

COLUMBUS, OHIO

CASE NO. 82-1695



***

CITY OF WILLOUGHBY HILLS

Plaintiff-Appellee

v.

ROBERT J. KONDRAT

Defendant-Appellant

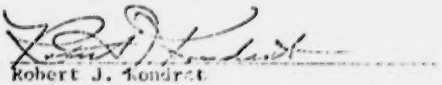
***

APPELLANT'S COMPLAINT AND REPLY

The captioned case was filed in this court on November 30, 1982. The received Appellee's Memorandum Opposing Jurisdiction is dated February 10, 1983. Rule II, Section 6 of Rules of Practice of the Supreme Court of Ohio specifies that Appellee shall file a memorandum opposing jurisdiction within thirty days. The Appellee has not adhered to this rule. Furthermore, the Appellee has not asked for nor was he granted an extension of time to file. Consequently, this court should have dismissed, or make dismissed, this case at Appellee's costs. Appellant objects to any special treatment given ABA members over non-ABA litigants.

The Appellee's Brief states that "Appellant had not filed a municipal income tax form for the 1977, 1978 and 1979 calendar years." This is a total lie. The Appellant has filed municipal income tax forms for each of those years. When is this court or the Bar Associations going to take action against counsel which presents the untruth?

Respectfully Submitted,



Robert J. Kondrat

SERVICE

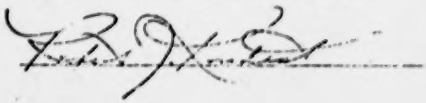
Copies of the foregoing APPELLANT'S COMPLAINT AND REPLY were mailed this 15th day of February, 1983, by regular U.S. mail, postage prepaid, to the following:

U.S. Attorney General Smith
The Department of Justice
Washington, D.C. 20530

Byron & Cantor
36100 Euclid Avenue/#330
Willoughby, OH 44094

Office of the Clerk
U.S. District Court
Cleveland, OH 44114
(To be filed and made a matter of record in case no. C82-896)

All Counsel in case no. C82-896



BAKER BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

ty of Willoughby Hills,
Appellee,
vs.
bert J. Kondrat,
Appellant.

19 83 TERM
To wit: March 2, 1983

No. 82-1695

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS
for LAKE *County*
TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

FOR YOUR INFORMATION ONLY NOT FOR FILING

COSTS:

Motion Fee, $20.00, paid by Robert J. Kondrat

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ..... 19 .....

..... *Clerk*

..... *Deputy*

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

ty of Willoughby Hills,

Appellee,

vs.

bert J. Kondrat,

Appellant.

*19*83 *TERM*

To wit: March 2, 1983

No. 82-1695

APPEAL FROM THE COURT OF APPEALS

for LAKE *County*

This cause, here on appeal as of right from the Court of Appeals for LAKE *County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.*

FOR YOUR INFORMATION ONLY NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for LAKE *County for entry.*

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this.....day of..... 19.....

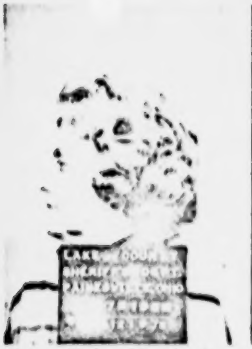
.....*Clerk*

.....*Deputy*

Terror and Repression in Willoughby Hills

The abuse of power is not dead. It still exists in Lake County, where you can be arrested and jailed for challenging your public officials.

by Frank Lazzaro



Name: Helen Mertineit Age: 56
Crime: signed same petition twice

Name: John Szabo Age: 61
Crime: allegedly allowed a notary public to write in a middle initial in his signature

A good point of departure in the telling of this bizarre tale might be nine days before the Christmas of 1976. The Mertineit home in Willoughby Hills was already radiant with the warmth and exhilaration of the holiday season. To celebrate the recent engagement of their son Ken, Dick and Helen Mertineit had decided to host a family dinner party that Thursday night. The gathering was both a celebration and a reunion; after all, Helen's family had not been together in almost seven years. Even her brother had left the sunny confines of Florida to join her for this special occasion. Most of the jubilant group were midway through dinner when the knock came at the front door.

"They've finally come for you, Ma," Kenny told his mother with a laugh as he rose to answer the door. He was referring to a strange phone call Helen had received the previous day from a newspaper reporter. He told her that she had been indicted by a grand jury for signing recall petitions against six city officials. Helen told the reporter that she knew nothing of indictments, and, discussing the call with her family later, agreed that the idea was too ludicrous to consider. After all, people were only indicted for committing serious crimes; in her 20 years in Willoughby Hills, Helen's only notoriety had come from helping to run the Little League.

The smile on Kenny's face froze when he opened the front door. Two policemen stood motionless on the front step, their forms silhouetted by the flashing red dome lights of patrol cars. The lights flickered off their holster weapons, reminding Kenny of an arrest scene he had seen on television. On *Kojak*.

"We have a secret indictment for the arrest of Helen Mertineit," one of them said, his face expressionless. "Ma," Kenny began, as he turned around to find his mother standing behind him. Her face was white.

"You'll have to come with us. Now!" the cop insisted. It was several moments before Helen could gather her thoughts into a sentence. "I . . . I'd like to put on a sweater and makeup," she said.

"We can't let you out of our sight," the policeman snapped as he and his partner stepped through the door. Helen's family watched in stunned silence as the two uniformed policemen followed her into the bedroom and bathroom to watch her don a sweater and apply makeup. Only her husband Dick was moving, trying to reach the family attorney on the telephone. Before he could, he saw his wife being escorted out the front door.

"Where are they taking my aunt?" Helen's young niece asked as she and the rest of the family watched Helen climb into the back seat of a patrol car. Already sitting in that back seat was 61-year-old John Szabo, a soft-spoken factory worker who had circulated recall petitions during the summer.

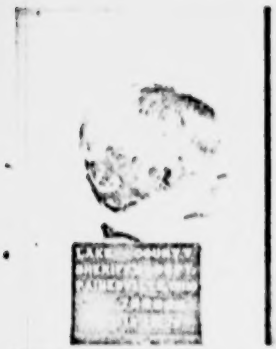
"Isn't this incredible?" asked Szabo, who was frightened. Helen could only mumble something about hoping she didn't have a heart attack. A victim of two previous breakdowns, she feared that her already shattered nerves could not survive this sudden strain.

As they both wondered about what crimes they had committed to warrant late-night arrests, Helen Mertineit and John Szabo were taken to the Lake County Sheriff's office, where they were formally fingerprinted, photographed and had their vital statistics recorded for the criminal files of Lake County and the memory banks of giant FBI computers in Washington. The deputies on station duty that night seemed less than eager to incarcerate these particular suspects, even embarrassed. "I feel like I'm arresting my own grandmother," one of them said as he was booking Helen. She was too numb to respond.

It was not until late the following morning that the pair learned exactly why they had been arrested. They were allowed to spend a sleepless night at home, but had to be back at the sheriff's office by 7 a.m. While awaiting arraignment, they were joined by Joanne Macko, a vigorous 35-year-old working housewife who had organized the recall petition drive. She, too, had been indicted for an unknown crime.

All three were eventually ushered into a Lake County courtroom and charged with various violations of Ohio petition laws. After pleading innocent, they were released to await trial.

The charges made against Macko, Mertineit and Szabo were eventually dropped. But in some ways, the arrest of these three Willoughby Hills residents was inevitable. They were the most serious casualties in a political war that has been simmering in that city for the past two years. When the seething political



Name: Joanne Macko Age: 35
Crime: allegedly allowed an unregistered voter to sign a petition

Name: Robert Kondrat Age: 52
Crime: allegedly allowed a woman to sign both her own and her husband's name on a petition

struggles had finally boiled over into an ongoing feud, several city residents were prompted into exercising a constitutional right — that of petitioning for a redress of grievances. Their attempt to recall six elected city officials unleashed a display of retribution that King George himself might have encouraged when dealing with what he considered to be colonial riffraff.

Like America at the time of the Revolution, Willoughby Hills is still in its infant stages of growth. This eastern suburb of 7,000 — over half of whom live in four high-rise apartment complexes — sits on the westernmost edge of Lake County, a mere 30-minute ride from downtown Cleveland. Although easily accessible from I-90, the town still manages to maintain a rural, almost nostalgic air. The lone elementary school, for example, is called Cricket Lane School; the Texaco station on Rockefeller Road sells antiques, groceries and even year-round farm produce. Even the Victor Hugo Bouse housing development near Chardon Road advertises "city water and sanitary sewers" on the same sign that encourages prospective buyers to select their own building site. Except for the new Eaton research plant on Chardon Road and several scattered stores, the city is totally residential — and most Willoughby Hills homeowners intend to see that it stays that way.

So it should perhaps come as no surprise that, in the midst of this exurban setting, politics is serious business. Because the local officeholders control city finances and zoning laws, they guide land use and development. Those who ignore a vocal populace usually find that the political wrath of the voters can descend quickly.

It was the fear of the city going broke, for example, that drove Willoughby Hills Mayor Bob Lenz from office in 1975. A former councilman, Lenz was considered an able city manager. But he was unable to keep the growing demand for new services from draining the city's operating funds. So when Melvin Schaefer, a Republican and political unknown who had attended only a handful of Willoughby Hills City Council meetings, went door to door in the '75 mayoral campaign telling voters it was time to "bite the bullet and reduce costs," they agreed with him.

The defeated Lenz, however, was not going to relinquish his good name along with his office. Fearful he might be blamed for financial problems that would surface during the new administration, he initiated a state audit of the city's books in late 1975. That was fine with Schaefer. A former roofing contractor who now sells real estate, Schaefer was determined to assume his responsibilities — especially the financial ones — with a firm hand. When preliminary audit results released in March 1976 showed that the city had finished the previous year with a balance of $248 in the general fund, Schaefer produced a stack of unpaid bills and asked for an income tax increase.

That idea rankled the small group of residents who persistently attended council meetings and badgered city officials. They believed that the increase was unnecessary and found a voice for their frustrations in George Edgar. Edgar, a 34-year-old corporate division manager for Ohio Nuclear, Incorporated, had served as council president under Mayor Lenz and now, as a regular councilman, was the new mayor's sole legislative opposition.

The citizen attempt to recall six elected officials unleashed a display of retribution that King George himself might have encouraged when dealing with what he considered to be colonial riffraff.

Despite the opposition from Edgar and the coalescing citizens group, Schaefer was determined to raise the income tax. He urged council to place a new income tax ceiling on the June 8 ballot. It passed by less than 30 votes, and council promptly tacked a one-half per cent tax increase on every city resident's paycheck.

Necessary or not, the tax hike was damaging to Schaefer and his five council allies. Edgar, whose only support in council came from James Kerr, continued to fight the mayor and Councilmen Sabby DeFrank,

Robert Moorehead, Morton O'-Ryan, George Kraincic and Lawrence O'Donnell on every major city issue. He was supported by a growing number of residents who sensed that too much city business was being conducted out of their sight. Like Edgar, they became eager to confront Schaefer and his council allies. Such confrontations turned most meetings into five-hour endurance tests.

Priscilla Slapnik, a vocal audience regular, frequently interrupted the speeches of administra-

Already under attack, Mayor Melvin Schaefer further angered his opponents by calling them "losers."

tion members by yelling "Liar!", only to be escorted from chambers by police. After awhile, hardly anyone flinched when Council President Sabby DeFrank's gavel would come loose and fly across the table as he demanded order.

The mayor and his council allies felt that kind of citizen pressure was unfair. "We were harassed at the council meetings," DeFrank says. "They didn't even give the new man in office time to get his feet wet."

But Schaefer's inability to deal with public pressure only aggravated the situation. DeFrank himself once referred to a loud council audience as clowns; and when pressed for information or copies of documents, members of the administration would often tell the residents in attendance that such matters were none of their business.

By late June, Edgar was so frustrated that he began organizing town hall meetings. "I felt that was the only way the public would find out what was going on," he says. Edgar insisted at those meetings that the city was not really broke, and that the voters had been fooled on the income tax.

The curious idea of deposing incumbents surfaced at one meeting. Specifically, someone asked how Warren Christen, the finance director, could be driven from City Hall.

"The finance director serves at the pleasure of the mayor," Edgar answered.

"So we have to get rid of the mayor to get rid of the finance director!" someone yelled in response.

"You can always take him out of there. The mayor can be recalled at any time by a citizens' petition," Edgar pointed out.

Edgar had never intended to use the town hall meetings as a springboard for a recall drive. But the mere mention of a petition drive excited frustrated townspeople who seemed unaware of the right of recall guaranteed by their city charter.

By August, a citizens group had formed as the Committee to Save the Hills. Joanne Macko, a typing teacher at Wickliffe Senior High School, and the driving force of the committee, enlisted the help of Beachwood lawyer Herb Braverman in drawing up petition forms for a recall drive. At petition parties held at her house, Braverman explained the correct procedure for gathering signatures to committee members. For the most part, they seemed confused by the fine print of the process.

Petitioners began banging on doors in mid-August in search of 637 signatures to put the recall question on the fall ballot. The action triggered a sharp, swift reaction from their political opponents. "A committee of losers," Schaefer called the group the day after the recall drive began. He maintained that the group was composed of sore losers from the '75 elections, acting out a personal vendetta against him. Schaefer also suggested that the petitions contained derogatory statements. "Everyone signing those petitions is endorsing those charges," he warned, "and can be answerable in a court of law."

The petitions accused the mayor and his five council friends of, among other things, failures in financial management. They also raised the dark specter of undesirable land development. "Failure to properly provide for the orderly and desireable growth of the community," the petitions read. "For example, in zoning and planning matters such as the expansion of the Cuyahoga County Airport and the addition of another, unneeded shopping center."

Although Schaefer had refused to oppose the airport expansion vigorously and was in fact neutral about the new office-retail business complex, the mayor felt the committee was unfairly saddling him with issues over which he had little direct control. Nevertheless, the committee worked hard. But there were difficulties. "It seemed like the mayor's statements scared some people," recalls John Szabo. "People would ask me, 'Are you sure we're not going to be sued if we sign?' "

With the requisite number of petitions finally gathered, the committee took them to Willoughby Hills City Clerk Marilyn Monzula for verification, as stipulated by law.

Schaefer immediately opened a counterattack by sending a letter to those who had signed the petitions, warning that many signatures had been obtained under false pretenses. The letter invited signers to remove their names.

At the same time, Edgar discovered Mrs. Monzula and four of the councilmen named in the recall poring over the petitions at city hall. The group obviously was caught by surprise. "They looked at me like I had found them with their pants down," Edgar says.

Mrs. Monzula subsequently ruled the petitions invalid, citing four reasons: insufficient grounds for removal had been listed; they contained "false" statements; not enough signatures were filed; and the affidavit — the complicated section of legalese committing the circulator to adhering to all petition laws — was also insufficient.

The Save the Hills Group was taken aback. They believed Mrs. Monzula had overstepped her authority in commenting on insufficient grounds and false statements. But the third allegation really stirred their ire. Mrs. Monzula had dis-

counted individual signatures because of minor technicalities: a missing middle initial, or an abbreviated first name. Her fourth objection was based on an abstruse legal technicality.

The petitioners soon learned that Mrs. Monzula was being advised by Barry Byron, the Willoughby Hills law director, who had been a background figure in the conflict until this time. He began to assume the leading role in the attempt to head off the recall movement, even writing Ohio Secretary of State Ted W. Brown to ask for an investigation of the drive for possible criminal transgressions.

The attempt to frustrate the petition drive became even more intimidating when Byron and Schaefer allowed the petitioners to examine petitions, but only under police supervision. To date, Schaefer maintains this was a matter of convenience. "The clerk did not have time to watch Mrs. Macko examine all the petitions," says the mayor.

His police chief never saw the matter that way. "You think we didn't have better things to do with our time?" asks Bill Thomas, now retired. "Even the officer in the room with those people felt the whole thing was ridiculous — but you have to understand that we were just doing our duty as requested by the mayor. Still, I think it was a piss-poor decision."

Mrs. Monzula still refuses to discuss her role in blocking the recall drive. "That's Mr. Byron's advice," she says.

When the petitioners had seemingly overcome Mrs. Monzula's objections, they asked the Ohio Supreme Court to validate the signatures and order the special recall vote. But the court in late October ruled the affidavits on the petitions incomplete. The administration had won.

Frustrated that legal technicalities had bogged down the amateurish attempt, the Save the Hills committee was unaware that further trouble lay ahead. Byron had taken depositions of committee members for the Supreme Court challenge and turned them over with petition copies to the Lake County Prosecutor, Paul Mitrovich.

Thus, just before Christmas 1976, with the recall drive in shambles, Mitrovich's office began seeking indictments from the Lake County grand jury of committee members for taking part in a perfectly legal constitutional process.

It was Law Director Barry Byron who advised Council Clerk Marilyn Monzula to invalidate, and later to impound, the recall petitions. Both still refuse to discuss their roles.

John Szabo first learned of the grand jury hearings when a *Plain Dealer* reporter called him in mid-December to ask why he had been indicted. Szabo thought the reporter was joking, until he heard from the same reporter the next night. "Are you still home?" the reporter asked. "I heard that you had already been indicted and arrested." Szabo was, indeed, scared. Still not putting together the reporter's comments with his own participation in the recall effort, Szabo was shocked when he answered a knock at the front door later that night to find uniformed Willoughby Hills cops and Lake County Sheriff's deputies waiting to arrest him.

Szabo was taken away without explanation. Frightened, he said nothing as the cops then arrested Mrs. Mertineit. (They also tried to arrest Mrs. Macko that night, but she was not home. Tipped off about the arrests by a friend who had heard of them on a citizens' police radio, she spent the night at her in-laws' home.)

The three suspects the next morning were blanketed with tighter security than what Lee Harvey Oswald had in Dallas. Reporters and photographers stood outside the sheriff's office, but deputies spirited

the "criminals" to the courthouse via a tunnel.

They were charged with the following crimes:

- Helen Mertenet with one count of petition violation, for signing the same petition twice.
- John Szabo with three counts of petition violations, for allegedly having allowed another person to fill in the middle initial of his own signature; four counts of perjury stemming from Byron's depositions.
- Joanne Macko with four counts of petition violations and one count of perjury.

The suspects were released, but photographed by the *Willoughby News Herald* as they exited the courthouse. The afternoon paper bannered the story on Page 1 with barely an explanation of what had taken place.

The following week, the grand

jury also indicted Robert Kondrat, a 52-year-old technical writer for the Austin Company. As a petitioner, he had allegedly allowed a woman to sign both her own and her husband's signatures.

The publicity of the arrests and indictments apparently had unnerved Lake County Sheriff Ed Cunningham, for when he received the orders to pick up Kondrat, he asked the man to surrender himself.

Kondrat, a precise man who chooses his words carefully, refused. "You can treat me like you treated the rest," he told the sheriff. Cunningham was forced to send over two deputies, who practically begged Kondrat to go with them.

If Kondrat was accorded the graciousness of the sheriff's office when arrested, he was treated like any other common miscreant when jailed. He was first put in a cell with no plumbing or toilet. After several hours there, he was transferred to a cell without lights. "I have no idea how long I was in there," Kondrat says. "It seemed like an eternity. 'Can this be America?' I kept asking myself."

That same day Kondrat appeared in court, but refused to hire a lawyer, maintaining he was not guilty of any crime and did not need one. He also refused to sign any papers -- including his personal bond. "You'll have to go back to jail if you don't sign this," Lake County Common Pleas Judge John Parks told him. Kondrat still refused. "I didn't trust anyone at that point," he says, "and I wasn't signing anything."

Kondrat was ushered back to jail, handed a uniform and put in a cell with a man accused of armed robbery. He sat there for the next six days -- including Christmas -- still unaware of his crime. Incredibly, since he would not hire a lawyer, Kondrat maintains, no one in a position of authority would tell him what law he had broken. Kondrat's only source of information was the inmate population. "I heard from my fellow prisoners that I had supposedly lied about something and would be brought to trial within 90 days."

On his second day in jail, Kondrat received a telegram from his fellow employes at the Austin Company. "We commend you highly," it read, "for standing by a principle in light of unusual pressures from Willoughby Hills governmental authorities who appear not to represent the American Way."

When Edgar visited him, Kondrat showed him the telegram. Edgar took it to the *Painesville Telegraph*, which reprinted it verbatim.

Edgar's ploy obviously irritated the sheriff's department, for when he returned to jail on Christmas Eve with a small television, cards and cookies, he was told to clear out — it was not Kondrat's visiting day. Convicted felons were visiting with friends and relatives on Christmas Eve, but Bob Kondrat, who allegedly had committed the heinous crime of allowing a wife to sign her husband's signature to a petition, was locked up and closed off to the world.

Edgar was especially angered that night by the pettiness of the deputies. "They said they couldn't accept Christmas cards without a postmark," he remembers.

Schaefer himself was not taking Kondrat's telegram magnanimously. He called Thomas Sweeney, a vice president of Austin, to complain about Kondrat and threatened legal action against the firm. "I thought Schaefer was some young squirt making a lot of noise," observes Sweeney. (Noise was also being made about the three who had already been arrested. One councilman's wife warned Wickliffe High School Principal Don Wellemeyer that he was harboring an alleged felon — typing teacher Joanne Macko — on his staff.)

After six days, Kondrat tired of his protest. He signed the necessary papers, learned of his alleged crime, and walked out of jail on personal bond.

To date, none of the public officials involved in fighting the recall or in detaining the four members of the citizens group has questioned the appropriateness, much less the wisdom, of the arrests. And Paul Mitrovich, who lost his prosecutor's seat last year, still will not admit that in this case the punishment outweighed the crime.

"That's a stomach argument," says Mitrovich. "The system cannot tolerate people lying under oath, even nice people. There are no exceptions to that. After all, making an example of people is what it's all about — that's supposed to be a deterrent to crime."

While the wrists of the four were not summarily chopped off, the indictments of Szabo, Mertiner, Macko and Kondrat were paraded through the local media. But after the arrests, the county's attempt at deterring such crimes took on all the seriousness of *Bowling for Dollars*.

Steve Futterer, the assistant county prosecutor who initially handled the cases with the enthusiasm of a district attorney going after Son of Sam, apparently had begun to see the futility of pressing charges. With his old boss back in private practice, Futterer, under the direction of the new prosecutor, John Shoop, sought to have the indictments dismissed. He succeeded in keeping three of the cases out of court.

Several weeks after his arrest, John Szabo was told that the charges against him would be dropped if he signed a waiver releasing the sheriff's and prosecutor's office of legal liabilities for the arrest. He accepted, as did Helen Mertiner. But both regretted their action afterward. "I didn't realize what I was signing," Szabo says. "I was told that those people are immune from prosecution anyway, and that I'd given 10 minutes to decide whether or not to sign."

Joanne Macko, however, refused to sign the waiver. She asked for a jury trial. Instead of complying and facing the possibility of being shamed in court, the prosecutor's office simply did not bring the case to trial. After the 90-day statutory limit, all charges by law had to be dropped.

Robert Kondrat also refused to sign the waiver. But unlike Mrs. Macko, he forced the prosecutor to take him to trial last July. The litigation lasted one day. Lake County Common Pleas Judge John Clair dismissed the charge when he discovered that Mrs. Monzula, the loyal city clerk, had not notified Kondrat of any problems with his petitions as required by law.

Kondrat was upset that the prosecutor's office and the Willoughby Hills officials squeezed out of the case before he could publicly state his position. In his opening statement to the jury — before Judge Clair made the decision to drop the charges — Kondrat, acting as his own lawyer, had noted that his case demonstrated "how city government can use the grand

jury as a vehicle to get at anybody they want."

Donald Klingenberg, a lawyer appointed by the court to help Kondrat, also pointed out that Law Director Barry Byron had laid the groundwork for the criminal charges against Kondrat while at the same time denying Kondrat the opportunity afforded him by law to correct the supposed defect in the petitions.

Judge Clair went a step further to express his incredulity about what had taken place. In dismissing charges, he said, "[There] was no evidence that [Kondrat] received a Miranda warning or that he was a suspect .... They compelled his attendance, cross-examined him or examined him ... and without a Miranda warning, without telling him what charges they were investigating."

In the end even Judge Clair wanted to hear Kondrat's defense. "I'm kind of sorry to do this," he told Kondrat when he dropped the charges. "I wanted to hear your side of the case."

With criminal charges dropped, only civil litigation remains. The Willoughby Hills Four have filed six separate lawsuits in Lake County Common Pleas and U.S. District Court.

Lawyer Lawrence Landskroner, on behalf of Macko, Szabo and Mertineit, has filed three suits against Mitrovich, Futterer, Byron, Monzula, Schaefer and the five councilmen. In the $1.3-million suits, Landskroner is accusing the officials of libel, slander, violation of civil rights, malicious prosecution and false arrest.

Herb Braverman has filed two suits for Kondrat, seeking $2.3 million for false arrest, defamation of character and malicious prosecution. Kondrat himself has another civil rights case on appeal which was tossed out of U.S. District Court late last year.

Although the Willoughby Hills Four have already won vindication on the criminal charges, their lives are not the same. Just the publicity of the affair has been distressing — as was their attempt at involving themselves in participatory democracy.

John Szabo, who had hoped to retire last year, will work two more years to meet his legal debts. Helen Mertineit continues to get strange looks at the supermarket, and someone is still throwing eggs at her house. Joanne Macko is still teaching typing, but legal fees have canceled, at least for the time being, her and her husband's plans to finish building their new home.

Robert Kondrat, who took the case more personally than the others, must live with some lingering questions about government in America. To say that his faith in the system has been shattered is an understatement. "What do you do," he asks with a helpless smile, "when the Constitution is torn up and thrown in your face?"

John Shoop and Steve Futterer still run the prosecutor's office without interference; Barry Byron still answers to Mayor Schaefer; and Schaefer was left with a rubber-stamp city council when George Edgar moved his growing family to a Geauga County home last fall.

Although they are still public officials, making public decisions, and are answerable to the electorate, Byron, Schaefer, Monzula and Futterer refuse to discuss their roles in the recall drive case.

In the end, the victory of the Willoughby Hills officials over those who attempted the recall may be a Pyrrhic one. Next year, in a process as democratic as a petition drive, most of them will be up for re-election. ■

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No. 82-1559

In the Supreme Court of the United States

October Term, 1982

ROBERT J. KONDRAT,
Petitioner,

vs.

CITY OF WILLOUGHBY HILLS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where the City offers to the trial court evidence as to a taxpayer's liability, and the taxpayer offers nothing to the court to create an issue as to a material fact, is the trial court correct in granting the City's Motion for Summary Judgment?

2. Is the nonpayment of taxes admittedly owed to a municipality a proper method of objecting to the policies of the municipalities?

3. Is the Supremacy Clause of Article VI of the United States Constitution a proper citation of Supreme Court jurisdiction?

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OPINIONS BELOW

The Ohio Supreme Court in Case No. 82-1695 on March 2, 1983, *sua sponte* dismissed Petitioner's appeal for the reason that no substantial constitutional question existed.

On October 18, 1982, the Eleventh District Court of Appeals of Ohio, in Case No. 8-280, affirmed the Summary Judgment granted by the Willoughby Municipal Court on August 24, 1981 in Case No. 80-CVF-39989.

JURISDICTIONAL STATEMENT

Petitioner filed a petition for a Writ of Certiorari on March 21, 1983, pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

No constitutional issues were raised or argued in the courts below by Petitioner.

STATEMENT OF THE CASE

On August 21, 1980, Respondent, City of Willoughby Hills, filed a civil complaint in the Willoughby Municipal Court against Petitioner for the collection of municipal income taxes for the 1977, 1978 and 1979 calendar years.

After Petitioner filed his Answer, the City filed a Motion for Summary Judgment accompanied by the Affidavit of the Willoughby Hills Tax Administrator alleging the amount then due and owing the City. On December 1, 1980, the Willoughby Municipal Court granted Petitioner a leave to answer discovery and the City's Motion for Summary Judgment by December 23, 1980.

Petitioner filed a motion to have the judge of the Willoughby Municipal Court removed from considering the case. On February 11, 1981, the Municipal Court certified the case to the Lake County Common Pleas Administrative Judge and stayed the proceedings pending the outcome of the certification.

On February 26, the Lake County Common Pleas Administrative Judge declined to remove the Municipal Court Judge from considering the case and referred the case back to the Municipal Court Judge for appropriate action.

On March 2, 1981, the Municipal Court Judge voluntarily removed herself and appointed an Acting Judge to consider the proceedings.

On or about March 4, 1981, Petitioner appealed the February 26 decision of the Lake County Common Pleas Administrative Judge. The Acting Municipal Court Judge stayed the City's case pending the disposition of the Petitioner's appeal.

On March 16, 1981, the City filed a Motion to Dismiss Petitioner's Appeal claiming that the Administrative Judge's Order from which Petitioner appealed was not a final appealable Order. The Court of Appeals agreed and dismissed the Petitioner's Appeal on May 18, 1981.

On August 24, 1981, the Acting Judge of the Willoughby Municipal Court granted the City's Motion for Summary Judgment. Petitioner appealed to the Lake County Court of Appeals.

The Court of Appeals affirmed the decision of the Municipal Court holding that Petitioner had set forth no assignments of error in his Brief. The court further found that the trial court based its summary judgment on "uncontradicted information sufficient to determine [Petitioner's] municipal income tax liability." Appellate Opinion at 6.

Petitioner then appealed to the Ohio Supreme Court, where that court *sua sponte* dismissed the appeal for lack of a substantial constitutional question.

The City now files this Brief in Opposition to Petition for Writ of Certiorari.

ARGUMENT

1. THE TRIAL COURT WAS CORRECT AS A MATTER OF LAW IN GRANTING THE CITY'S MOTION FOR SUMMARY JUDGMENT AGAINST PETITIONER WHERE PETITIONER OFFERED NO FACTS TO CONTROVERT HIS LIABILITY AND NONPAYMENT OF TAXES.

This case arises out of an action by the City of Willoughby Hills to collect municipal income taxes which Petitioner refused to pay for the 1977, 1978 and 1979 calendar years. The sole issue raised by either party at the trial level was whether the Petitioner could refuse to pay those taxes. Petitioner claims that he cannot be compelled to pay taxes which "support a government whose officials are oppressive and who disregard the law."

An uncontroverted Affidavit from the Tax Administrator of the City was presented to the trial court which offered evidence that Petitioner owed, but had not paid, his municipal income taxes. The Affidavit was offered in support of Respondent's Motion for Summary Judgment under Ohio Civil Rule of Procedure 56 which, like its federal counterpart, allows the court to rule as a matter of law where no material fact is in dispute.

In the trial court, Petitioner offered nothing to put into dispute the fact that he had not paid the taxes which were owed. In fact, in his Petition for Writ of Certiorari, Petitioner admits that he owes the tax monies. (Petition, p. 7) Because there was no dispute that Petitioner owed, but had not paid, his municipal income taxes, the trial court was correct in granting the City's Motion for Summary Judgment, and the Lake County Court of Appeals was correct in affirming that decision.

2. PETITIONER MAY NOT REFUSE TO PAY HIS MUNICIPAL INCOME TAX AS A PROTEST AGAINST LOCAL GOVERNMENT.

The facts revealed to the lower courts showed that the only reason Petitioner failed to pay his municipal income tax was because he was dissatisfied with the local government.

It is well-settled that a taxpayer's objection to the government's manner of operation and to ways it spends money raised by income taxes does not present a basis for the individual taxpayer to assert invalidity of income tax laws or exonerate his personal liability thereunder. *Ward v. United States*, 344 F.2d 316 (10th Cir. 1965), *cert. denied*, 385 U.S. 1014. Furthermore, a taxpayer's disagreement with policies of government because they may not be in accord with dictates of the taxpayer's personal beliefs does not justify refusal to comply with the law or justify the nonpayment of income taxes. *Lull v. Commissioner*, 602 F.2d 1166 (4th Cir. 1979). See also: *Crowe v. Commissioner*, 396 F.2d 766 (8th Cir. 1968).

Therefore, Petitioner cannot refuse to pay his income taxes because he is dissatisfied with his local government. An uncontroverted affidavit at trial showed that he owes the tax. Petitioner has even admitted that he owes the tax. Thus, the lower courts were correct in determining that Petitioner should pay his taxes owed to the City, and this Court should deny Petitioner's Petition for Certiorari.

3. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT PROVIDE JURISDICTION FOR THIS COURT.

Petitioner claims in his Jurisdictional Statement that this Court's jurisdiction for this case is found in Article VI of the United States Constitution—the Supremacy Clause. Petitioner's claim is erroneous.

The Supremacy Clause does not provide jurisdiction for this Court. It provides that no state law shall interfere with the laws of the United States.

Petitioner has not demonstrated to this Court, or to any court, how any law of Ohio or Willoughby Hills has interfered with any law of the United States. Nor has Petitioner shown how the Supremacy Clause relates to the taxes which he admittedly owes, but has not paid. Therefore, Petitioner's Petition for Certiorari should be denied.

CONCLUSION

Respondent respectfully requests that this Honorable Court deny jurisdiction. The trial court was provided with uncontroverted evidence showing that Petitioner owed taxes which he had refused to pay, and correctly granted the City's Motion for Summary Judgment based thereon. Because Petitioner cannot refuse to pay his income taxes simply because he is dissatisfied with the local government, the lower courts were correct in rendering an affirming judgment against him.

Respectfully submitted,

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